

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES – GENERAL**

Case No. 5:22-cv-01977-ODW-AJR

Date: December 18, 2023

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Title: Alberto Hernandez v. United States of America, et al.

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DOCKET ENTRY: **ORDER TO SHOW CAUSE WHY CLAIMS AGAINST  
DEFENDANT J. STEINBERG SHOULD NOT BE  
DISMISSED PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE 4(M)**

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PRESENT:

**HONORABLE A. JOEL RICHLIN, UNITED STATES MAGISTRATE JUDGE**

Claudia Garcia-Marquez

Deputy Clerk

None

Court Reporter/Recorder

None

Tape No.

ATTORNEYS PRESENT FOR  
PLAINTIFF:

None Present

ATTORNEYS PRESENT FOR  
DEFENDANTS:

None Present

**PROCEEDINGS: (IN CHAMBERS)**

On November 4, 2022, Alberto Hernandez (“Plaintiff”), a federal prisoner proceeding *pro se*, filed a civil rights complaint pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999. (Dkt. 1 “Complaint”.) The Complaint sued the United States, Michael Monk, Felipe Martinez, and John Doe. (Dkt. 1 at 3.)

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On December 2, 2022, Judge Rocconi issued an Order Directing Service of Plaintiff's Complaint by the USMS and an order authorizing discovery by Plaintiff to discover the identity of the unnamed defendant, John Doe. (See Dkt. 6 & 7.) Judge Rocconi's order authorizing discovery warned that if Plaintiff was unable to obtain the identity of and effect service upon the Doe Defendant, his claims against the Doe Defendant could ultimately be dismissed. (See Dkt. 7 at 2.) On August 21, 2023, the USMS filed a Process Receipt and Return stating they were unable to locate and serve Defendant John Doe, Medical Personnel-Individual at 320 1st. St NW, Washington, DC 20534. (Dkt. 16.)

On August 24, 2023, the Court issued an Order to Show Cause why claims against Defendant John Doe should not be dismissed for failure to effect timely service pursuant to Federal Rule of Civil Procedure 4(m). (Dkt. 22.) On September 28, 2023, Plaintiff filed the operative First Amended Complaint ("FAC"). (Dkt. 31.) The FAC named the same Defendants in the Complaint, and identified the unnamed John Doe as J. Steinberg, the medical personnel at U.S. Penitentiary, Victorville ("USP Victorville") at 320 1st St. NW, Washington, DC 20534. (Id. at 3.) On October 11, 2023, the Court directed the USMS to serve the FAC on the United States of America, Dr. Michael Mank, Felipe Martinez, and J. Steinberg. (Dkt. 32.)

On November 3, 2023, the United States of America filed an Answer. (Dkt. 37.) Also on November 3, 2023, Defendants Michael Mank and Felipe Martinez filed a Motion to Dismiss the FAC. (Dkt. 36). In the Motion to Dismiss, Defendants Mank and Martinez stated that the Bureau of Prison's ("BOP") personnel records do not have an employee by the name of "J. Steinberg." (Id. at 1, n.1.) As of today, J. Steinberg has not been served with the FAC or appeared in the action.

As the Court has previously advised Plaintiff, Federal Rule of Civil Procedure 4(m) provides in relevant part that if a "defendant is not served within 90 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). However, the Rule also provides that if the plaintiff

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shows good cause for the failure, “the court must extend the time for service for an appropriate period.” Id.

Because the operative First Amended Complaint was filed on September 28, 2023, the 90-day deadline to effect service on every Defendant, named or unknown, will expire on December 27, 2023. See Ticketmaster L.L.C. v. Prestige Entm’t W., Inc., 315 F. Supp. 3d 1147, 1158 (C.D. Cal. 2018) (90-day deadline under Rule 4(m) applies to service on DOE Defendants but may be extended on a showing of good cause); Tabi v. Doe, 2019 WL 5107102, at \*6 (C.D. Cal. June 13, 2019), report and recommendation adopted sub nom. Tabi v. Doe No. 1, 2019 WL 4013444 (C.D. Cal. Aug. 26, 2019) (dismissing action against DOE Defendants without prejudice for failure to serve within Rule 4(m)’s 90-day deadline); Scott v. Hern, 216 F.3d 897, 911-912 (10th Cir. 2000) (affirming dismissal of action against DOE Defendants for failure to effect timely service under Rule 4(m)). Accordingly, the time for service on J. Steinberg is running out and it appears that service will not be effectuated by the deadline due to lack of information about this defendant.

**Accordingly, Plaintiff shall respond by January 9, 2024 either providing additional information about the identify of J. Steinberg or proposing additional discovery that is needed to identify this defendant.** If Plaintiff wants to take additional discovery, Plaintiff shall file a response describing the form of discovery and who the discovery will be served on. The Court will evaluate this proposed discovery and either approve or deny it.

**Plaintiff is explicitly cautioned that the failure to respond to this Order by the Court’s deadline will result in a recommendation that any claim against Defendant J. Steinberg be dismissed without prejudice pursuant to Rule 4(m). If Plaintiff no longer wishes to pursue his claims against Defendant J. Steinberg, he may request a voluntary dismissal of his claims against Defendant J. Steinberg pursuant to Federal Rule of Civil Procedure 41(a). A Notice of Dismissal form is attached for Plaintiff’s convenience.**

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IT IS SO ORDERED.

Attachment:

CV-09, Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a) or (c).